

BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

In the Matter of:)	
)	
Opinion requested by)	No. 75-099
John C. Morrissey)	July 6, 1976
Pacific Gas and Electric Company)	
)	

BY THE COMMISSION: We have been asked the following questions by John C. Morrissey, General Counsel of Pacific Gas and Electric Company:

A Land Use Planning Advisor employed by the Pacific Gas and Electric Company, (hereinafter "PG&E") serves on the Citizens' Advisory Committee of the San Francisco Bay Conservation and Development Commission (hereinafter "BCDC").

(1) By virtue of his service on the Citizens' Advisory Committee, is this employee an "agency official" within the meaning of Government Code Section 82004?

(2) When the employee engages in "direct communication" with state agency officials while serving on the Advisory Committee, would any portion of his salary be reportable by PG&E on its lobbyist employer report as a "payment to influence legislative or administrative action" even though he is not communicating on behalf of his employer and is performing all of his regular work assignments without additional cost to the company?

(3) If the employee communicates with state officials on a "substantial and regular" basis (2 Cal. Adm. Code Section 18239(e)), is he a lobbyist as defined in Government Code Section 82039?

CONCLUSION

(1) A member of the Citizens' Advisory Committee is not an "agency official" as defined in Government Code Section 82004.

(2) Salary payments to a member of the Citizens' Advisory Committee are not payments to influence legislative or administrative action. Government Code Section 82045.

(3) The employee who serves as a member of the Citizens' Advisory Committee is not a lobbyist. Government Code Section 82039.

ANALYSIS

The statutes under which BCDC operates provide for the establishment of a Citizens' Advisory Committee to assist and advise the Commission in carrying out its functions. Government Code Section 66636.^{1/} The Advisory Committee includes representatives of diverse interests that are concerned with land use in the San Francisco Bay Area. Section 66636 sets forth the following standards for membership on the Advisory Committee:

At least one member of the advisory committee shall be a representative of a public agency having jurisdiction over harbor facilities, and another shall represent a public agency having jurisdiction over airport facilities. The advisory committee shall also include representatives of conservation and recreation organizations, and at least one biologist, one sociologist, one geologist, one architect, one landscape architect, one representative of an industrial development board or commission, and one owner of privately held lands within the San Francisco Bay as defined in Section 66610.

Pursuant to this statutory directive, BCDC has established an Advisory Committee of twenty members. An employee of PG&E was invited to serve on the Advisory Committee because of his expertise as a land use planner and his employment in land use planning with a private entity having significant land use needs within BCDC's jurisdiction. There is no compensation for service on the Advisory Committee.

(1) Mr. Morrissey's first question is whether the PG&E employee is an "agency official" within the meaning of Section 82004 of the Political Reform Act, Sections 81000 et seq. For the reasons stated below, we have concluded that a member of the Citizen's Advisory Committee is not an agency official.

Initially, we must consider whether the Citizens' Advisory Committee of the Bay Conservation and Development

^{1/}All statutory references are to the Government Code unless otherwise noted.

Commission is a state agency, because the definition of "agency official" includes only those persons who are officials with state agencies. "State agency" is defined in Section 82049 to include state boards and commissions, and a regulation interpreting Section 82049 identifies four criteria that must be satisfied in order for an organization to be deemed a state agency. 2 Cal. Adm. Code Section 18249.2/ The BCDC Citizen's Advisory Committee satisfies each of these four criteria because (1) the Committee is authorized by statute, Section 66636; (2) the members are appointed by BCDC, a state agency; (3) the Advisory Committee, as a committee of BCDC, is supported by state funds; and (4) the Advisory Committee includes within its jurisdiction an area larger than one county.

Having resolved this threshold issue, we must consider whether a member of the Advisory Committee is a "member, officer, employee or consultant...who...participates in any administrative action in other than a purely clerical, secretarial or ministerial capacity." Section 82004. An unsalaried member of an advisory committee is clearly not an employee, officer or consultant of the state agency. Moreover, for the reasons stated below, we conclude that a member of the BCDC Citizens' Advisory Committee is not a "member" of the state agency, as that term is used in Section 82004, and therefore is not an agency official.

We previously have determined that the term "member" of an agency is a term of art and that, as used in the definition

2/2 Cal. Adm. Code Section 18249 states:

An agency is a state agency within the provisions of Government Code Section 82049 only if all the following criteria are met:

(a) The agency is authorized by statute, executive order or the California constitution.

(b) At least one voting member is an elected state officer or is appointed by an elected state officer or an agency official or a state agency.

(c) The agency is financed in part by any state funds or is subject to appropriation in the state budget.

(d) An area larger than one county is included in its jurisdiction.

of "public official," Section 82048, includes members of those boards or commissions that have decision-making authority but does not include members of boards that are purely advisory. 2 Cal. Adm. Code Section 18700(a)(1) provides that:

"Member" shall include, but not be limited to, salaried or unsalaried members of boards or commissions with decision-making authority. A board or commission possesses decision-making authority whenever:

(A) It may make a final governmental decision;

(B) It may compel a governmental decision by any agency;

(C) Its action, recommendation, or consideration is a legal prerequisite to a final governmental decision; or

(D) It makes substantive recommendations which are, and over an extended period of time have been, regularly approved without significant amendment or modification by another public official or governmental agency.

In this opinion, we adopt the same definition of "member" to define "agency official." Such an interpretation not only has the obvious advantage of consistent statutory interpretation,^{3/} but also serves the purposes of the statute by limiting the scope of the term "agency official" to those members of boards or commissions who are actively involved in decision-making. The lobbyist reporting requirements and prohibitions were enacted so that improper influences will not be directed at public officials. Section 81002(c). Clearly, the provisions of Chapter 6 are intended to prevent biased decisions and should apply only to persons who participate in decision-making. It would unnecessarily broaden the

^{3/}"Public official" is defined in Section 82048 to mean "every member, officer, employee or consultant of a state or local government agency." "Agency official" is similarly defined to mean "any member, officer, employee or consultant of any state agency who as part of his official responsibilities participates in any administrative action in other than a purely clerical, secretarial or ministerial capacity." Section 82004.

Act's requirements to characterize members of boards with no decision-making authority as "agency officials."^{4/}

Applying the test set forth above to the instant case, we do not believe that the BCDC Citizen's Advisory Committee possesses "decision-making authority," and consequently its members are not "agency officials." Members of the Advisory Committee review and comment on BCDC staff proposals. If the staff agrees with their comments, views of the Advisory Committee member are incorporated in the staff recommendations. If the staff disagrees, the Advisory Committee member can present the dispute to the entire Bay Conservation and Development Commission and the Commission ultimately makes a decision. There is no requirement of unanimity or consensus on the Advisory Committee in order to make a presentation to the full Commission. Through both informal recommendations to the staff and formal presentations to BCDC, an Advisory Committee member can influence the policies and standards in the San Francisco Bay Plan. However, the Advisory Committee does not make a final decision and it cannot compel BCDC to make a final governmental decision. The Advisory Committee is established "to assist and advise [BCDC] in carrying out its functions," Section 66636, but the statute does not require an action, recommendation or consideration as a legal prerequisite to a final decision by BCDC. Moreover, it does not appear that the recommendations of the Advisory Committee or of individual members of the Advisory Committee have been routinely approved by BCDC. The BCDC Citizens' Advisory Committee appears, therefore, to be a truly advisory body, made up of individuals representing different interests who are all concerned with land use in the San Francisco Bay Area. The Committee's recommendation is one of several factors influencing the BCDC planning process. Accordingly, we conclude that a person who serves on the Citizens' Advisory Committee is not an agency official.

(2) Having determined that the Advisory Committee member is not an agency official, we must determine whether any portion of his salary is reportable by PG&E as a "payment to influence legislative or administrative action." Section 82045.

PG&E files periodic reports disclosing, among other information, payments to influence legislative and

^{4/}The definition of "agency official" is expressly limited to persons who participate "in any administrative action in other than a purely clerical, secretarial or ministerial capacity." Section 82004. This provision does not exclude members of advisory boards from the definition because such members may participate in "administrative action," as that term is defined in Section 82002.

administrative action. Section 86109(c). The term "payment to influence legislative or administrative action" includes any "payment, including compensation, payment or reimbursement for the services, time or expenses of an employee, for or in connection with direct communication with any elective state official, legislative official or agency official." Section 82045(d). Regulations adopted by the Commission make it clear that such payments are only reportable if the purpose of the communication is "to influence legislative or administrative action." 2 Cal. Adm. Code Sections 18620(a)(4) and 18621(a)(3).

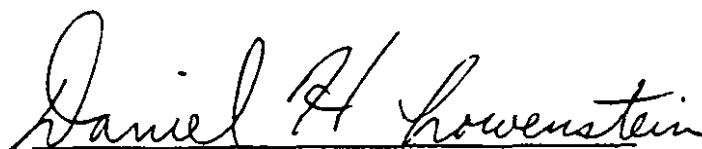
While serving as a member of the Advisory Committee, PG&E's Land Use Planner will be engaging in direct communication with employees and members of the Bay Conservation and Development Commission who are agency officials. Although he is not compensated by PG&E for participating on the Committee, he is permitted to attend meetings of the Advisory Committee and to engage in related activities during normal working hours. Accordingly, PG&E asks whether it must report a portion of its salary payments to the Advisory Committee member as payments "for or in connection with direct communication with any agency official," even though the employee does not communicate on behalf of PG&E and performs all of his regular work assignments without additional cost to the company.

These facts present a close question. After giving them careful consideration, we conclude that salary payments to an employee who serves on the Advisory Committee are not payments to influence administrative action. Although the PG&E employee may engage in direct communication with agency officials, he does not influence administrative action on behalf of PG&E. He was invited to serve because of his expertise as a land use planner and his employment in land use planning with a private entity having significant land use needs within BCDC's jurisdiction. Thus, he was not appointed solely to represent the interests of his employer. Moreover, the reporting required by Chapter 6 is intended to disclose salary payments to those employees who are paid to influence administrative action. In this case, PG&E employs the planner to do land use planning, not to influence administrative action. Although he serves on the Committee, he is expected to complete all his regular work assignments with PG&E. Finally, the information that would be obtained if reporting were required is not significant. It is a matter of public knowledge that the planner is a PG&E employee. Any purpose that would be served by requiring disclosure of his salary does not justify the potential deterrent to service on advisory boards that might result if such disclosure were required. Consequently, we conclude that salary payments to him should not be characterized as "payments to influence... administrative action."

(3) PG&E also has asked if the Advisory Committee member will become a "lobbyist" if he spends the requisite amount of time serving on the Committee.

The term "lobbyist" is defined in Section 82039 and further clarified by regulation, 2 Cal. Adm. Code Section 18239. For the reasons stated in the previous section of this opinion, we conclude that the land use advisor is not "employed...to communicate directly...with any...agency official...for the purpose of influencing...administrative action...." Section 82039. Consequently, the employee is not a lobbyist.

Approved by the Commission on July 6, 1976. Concurring:
Brosnahan, Carpenter, Lapan, Lowenstein and Quinn.


Daniel H. Lowenstein
Chairman